

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

RITA KUNZ and HERMAN KUNZ,)	
)	
Plaintiffs,)	
)	
vs.)	3:14-cv-00164-RLY-WGH
)	
EVANSVILLE SURGICAL)	
ASSOCIATES, INC. and ROGER S.)	
SHINNERL M.D.,)	
)	
Defendants.)	


ENTRY ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Rita Kunz and Herman Kunz, filed this medical malpractice action against Defendants, Evansville Surgical Associates, Inc. and Dr. Roger S. Shinnerl, for claims arising out of a thoracotomy procedure Dr. Shinnerl performed on Mrs. Kunz in September 2011. This matter now comes before the court on Plaintiffs' Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a).

Plaintiffs only seek summary judgment on the issue of liability. Plaintiffs' sole argument in support of their motion is that the unanimous opinion of the Medical Review Panel (the "Panel"), finding that "Defendants failed to comply with the appropriate standard of care as charged in the complaint, and the conduct complained of was a factor of the resultant damages," satisfies the elements of a medical malpractice claim under Indiana law. (Filing No. 18-1, 18-2, 18-3, Opinions of the Medical Review Panel). Plaintiffs assert that Defendants have failed to produce any expert testimony contradicting the Panel and summary judgment is therefore required.

In opposition, Defendants submitted a sworn affidavit from a medical expert. (Filing No. 30-1, Affidavit of James D. Luketich, M.D.). Dr. Luketich concludes, “I do not believe that under the circumstances of this case, that Dr. Shinnerl deviated from the applicable standard of care” (*Id.* at ¶ 12). Defendants argue that this expert testimony directly contradicts the opinion of the Panel, thereby creating a genuine dispute of material fact under Rule 56. The court agrees, and Plaintiffs make no attempt to dispute this.¹ Therefore, the court **DENIES** Plaintiffs’ Motion for Summary Judgment (Filing No. 17).

SO ORDERED this 9th day of November 2015.



RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

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¹ Plaintiffs filed a one-sentence document following Defendants’ response brief: “Come now the Plaintiffs . . . and inform the Court that with the Defendants opposing Affidavit of Dr. Luketich making no referenced to any supportive peer review literature or other references that no reply brief will be submitted (sic).” (Filing No. 33). Despite claiming that they would not submit a reply brief, Plaintiffs seemingly attempted to discredit Dr. Luketich’s affidavit in their notice. To the extent that this single sentence can be construed as an argument, the argument is waived. *See United States v. Elst*, 579 F.3d 740, 747 (7th Cir. 2009) (“Perfunctory and undeveloped arguments as well as arguments unsupported by pertinent authority are waived.”).